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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Republic of Korea

1. The Committee considered the second periodic report of the Republic of Korea (CCPR/C/114/Add.1) at its 1791st and 1792nd meetings (see CCPR/C/SR.1791 and SR. 1792), held on 22 October 1999, and adopted the following concluding observations at its 1802nd meeting (CCPR/C/SR.1802), held on 29 October 1999.

A. Introduction

2. The Committee welcomes the second periodic report submitted by the Republic of Korea within the specified time limit. The Committee regrets, however, that despite its comment that the initial report of the State party did not include sufficient information about implementation of the Covenant in practice, the second periodic report suffered from the same deficiency. The Committee further regrets the lack of responses to a number of questions posed by its members during the examination of the report. As a result, the Committee was prevented from fully monitoring compliance by the State party with all provisions of the Covenant.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee appreciates the security concerns of the State party that result from the fact that no final agreement has been reached between the two Koreas. The Committee stresses, however, that citing security concerns does not of itself justify restrictions on Covenant rights, and that even when a state party is faced with

genuine security problems restrictions on rights must meet the requirements of the Covenant.

C. Positive factors

4. The Committee commends dissemination of the report among non-governmental organizations that contributed significantly to the Committee's examination of the report. The Committee takes note of an increasing openness of society, as is evident from abolition of the Performance Monitoring Committee, which had been responsible for censorship of the performing arts.

5. The Committee notes the enactment of a number of laws aimed at strengthening protection of Covenant rights, especially the rights to equality protected under article 2, paragraph 1, and articles 3 and 26 of the Covenant. These laws include the Basic Women's Development Act, amendments introduced in the Employment Equality Act, the Handicapped Employment Act, the Gender Discrimination Prevention and Relief Act and the Prevention of Domestic Violence and Victim Protection Act.

6. The Committee notes measures undertaken to enhance awareness of the Covenant and of human rights in general that include obligatory human rights training for judges, lawyers and prosecutors. It also welcomes the translation into the Korean language and distribution of the major international human rights instruments.

D. Principal Areas of Concern and Recommendations

7. The status under domestic law of the rights provided for in the Covenant remains unclear, particularly since the Korean Constitution does not enumerate all of these rights and the extent and criteria under which they may be limited. The Committee is concerned that article 6 of the Constitution, according to which international treaties ratified by the State party have the same effect as domestic laws, has been interpreted as implying that legislation enacted after accession to the Covenant has status superior to that of Covenant rights.

8. The Committee reiterates its grave concern expressed after consideration of the initial report regarding the continued existence and application of the National Security Law. According to the State party, the National Security Law is used to deal with legal problems that arise from the division of Korea. However, the

Committee is concerned that it is also used to establish special rules of detention, interrogation and substantive liability that are incompatible with various articles of the Covenant, including articles 9, 18 and 19.

The Committee reiterates the recommendation made after consideration of the State party's initial report that the State party phase out the National Security Law.

9. The Committee considers that the scope of activities that may be regarded as encouraging "anti-state organizations" under article 7 of the National Security Law is unreasonably wide. From the cases that have come before the Committee in individual communications under the Optional Protocol, and other information provided on prosecutions brought under article 7, it is clear that the restrictions placed on freedom of expression do not meet the requirements of article 19, paragraph 3 of the Covenant, as they cannot be regarded as necessary to protect national security. The Covenant does not permit restrictions on the expression of ideas, merely because they coincide with those held by an enemy entity or may be considered to create sympathy for that entity. The Committee also emphasizes that internal directives regarding prosecution policy do not provide adequate guarantees against the use of article 7 in a manner that is incompatible with the Covenant.

The State party must urgently amend article 7 so as to make it compatible with the Covenant.

10. The Committee is deeply concerned about the laws and practices that encourage and reinforce discriminatory attitudes towards women. In particular, the family headship system both reflects and reinforces a patriarchal society in which women have a subordinate role. The practice of identifying the sex of foetuses, the disproportionate percentage of boys among second and third-born children and the high rate of maternal mortality that apparently arises from the number of unsafe abortions are deeply disturbing. The Committee stresses that prevailing social attitudes cannot justify failure by the State party to comply with its obligations, under articles 3 and 26 of the Covenant, to ensure equal protection of the law and the equal right of men and women to the enjoyment of all the rights set forth in the Covenant.

11. While welcoming the new legislation enacted by the State party for the prevention and punishment of domestic violence, the Committee remains concerned at the high level of such violence and the remaining inadequacies in law and practice.

Specifically, the Committee is concerned that the offence of rape requires evidence of resistance by the woman, that marriage to the victim of rape provides a defence to the accused, and that it appears that marital rape is not a criminal offence.

The new legislation on prevention and punishment of domestic violence should be strengthened by eliminating existing legal rules that weaken the protection of women against such violence.

12. The Committee is concerned over the extent of discrimination against women in employment, over the lack of adequate protection for the high number of women employed in small enterprises and over the disparity between the earnings of men and women.

In order to ensure compliance with articles 3 and 26 of the Covenant, the State party must promote effective implementation of the Gender Discrimination Prevention and Relief Act enacted in January 1999, and adopt positive measures to guarantee equality of opportunity and conditions of employment for women.

13. The law of criminal procedure, under which the detention of a suspect is subject to judicial review only if the detainee lodges an appeal, is incompatible with article 9, paragraph 3, of the Covenant, which provides that every person detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. The excessive length of permissible pre-trial detention (30 days in ordinary cases and 50 days in cases involving the National Security Law), and the lack of defined grounds for such detention also raise questions of compliance by the State party with article 9.

The State party must amend its law so as to ensure respect for all the rights of detained persons provided for under article 9 of the Covenant.

14. The Committee takes note of the procedures for monthly monitoring of conditions in detention centres by prosecutors, but it is concerned that these and other mechanisms are not adequate to prevent instances of torture and cruel, inhuman and degrading treatment of detainees. The small percentage of cases in which complaints of torture or cruel, inhuman and degrading treatment lead to action against officials calls into question the credibility of the existing procedures of investigation. The Committee is also concerned that non-compliance by the State party with the requirements of article 9 of the Covenant, and the seemingly widespread reliance of the prosecuting authorities and the courts on confessions by

accused persons and accomplices, facilitate acts of torture and cruel, degrading and inhuman treatment by interrogating officials.

Establishment of an independent body to investigate allegations of torture and amendments of the criminal procedure mentioned in para. 15 above should not be delayed.

15. While the Committee welcomes the abolition of the "ideology conversion oath", it regrets that it has been replaced by a "law-abidance oath". From the information provided to the Committee it remains unclear which prisoners are required to sign the oath and what the consequences and legal effects of the oath are. The Committee is concerned that the oath requirement is applied, on a discriminatory basis, particularly to persons convicted under the National Security Law, and that in effect it requires persons to make an oath to abide by a law that is incompatible with the Covenant.

The "law-abidance oath" imposed on some prisoners, as a condition for their release, should be abolished.

16. The Committee regrets that, in view of the paucity of information provided in the report and in the responses of the delegation during consideration of the report it is unable adequately to assess the extent of judicial independence. It is particularly concerned about the system of reappointment of judges that raises serious questions about judicial independence.

The State party must provide full details on the system and actual practice of judicial appointments.

17. The extensive use of wiretapping raises serious questions of compliance by the State party with article 17 of the Covenant. The Committee is also concerned that there are no adequate remedies by way of correction of inaccurate information in data-bases or for their misuse or abuse.

18. The prohibition of all assemblies on major roads in the capital would appear to be overbroad. While some restrictions on assemblies on main roads in the interests of public order are permissible, article 21 of the Covenant requires that all such restrictions be in conformity with the law and be necessary in a democratic society. The absolute restrictions on the right to hold assemblies on main roads imposed by the State party do not meet these standards.

19. The Committee notes the changes in law that allow teachers to form trade unions, and public servants to form work-place associations. Nevertheless, the Committee is concerned that the remaining restrictions on the right to freedom of association of teachers and other public servants do not meet the requirements of article 22, paragraph 2, of the Covenant.

The State party should continue with its programme of legislation regarding the right of association of public servants with the object of ensuring that all persons in Korea shall enjoy their rights under article 22 of the Covenant.

20. The Committee welcomes the withdrawal by the State party of its reservations on articles 23 (para. 4) and 14 (para. 7). It strongly recommends that the State party review the remaining reservations on articles 14 (para. 5) and 22 with a view to their eventual withdrawal.

21. In relation to the Committee's Views on Communications submitted under the Optional Protocol, the Committee finds it inappropriate that the State party should require the author of a communication on which the Committee has expressed its views to seek a remedy through the domestic courts, by way of further appeal or a claim for compensation.

Rather than referring such cases back to the domestic courts which have already pronounced on the matter, the State party should immediately proceed to give effect to the Views expressed by the Committee.

22. The Committee calls on the State party to continue its efforts to provide human rights education to its public officials. It recommends that the State party consider making such education obligatory, not only for public officials but for members of all human rights-related professions, including social workers and medical personnel.

23. The Committee requests that the State party submit its third periodic report by 31 October, 2003. That report should be prepared in accordance with the revised Guidelines adopted by the Committee (CCPR/C/66/GUI) and should give particular attention to the issues raised in these concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in the Republic of Korea.